

Eight Secrets to Hiring a Great Divorce Lawyer

An Insider's Guide

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He has represented clients throughout the state of New Mexico in a wide range of divorce cases, from uncontested divorces to complex divorce litigation.

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INTRODUCTION

DIVORCE is just a legal term. When you decide to part ways with your spouse, you still have to be able to communicate with one another and jointly raise your children into adulthood. Despite the divorce, there will be soccer games, school events, birthday parties, graduations, weddings, and many other activities to attend. Your divorce will set the stage for the dynamics of your new and very different relationship with your spouse, and I believe it should be as civil and stress-free as possible.

If you are considering divorce, you probably have many questions about the divorce process, including the division of property, assets, and debts; child custody, support, and visitation; and spousal support, also known as alimony. Engaging a well-respected attorney who specializes in divorce and family law, knows the legal roadblocks, and patiently guides you through the daunting divorce process is paramount to getting the results you desire.

In this booklet, I use the terms “divorce” and “family law” interchangeably because family law statutes encompass everything involved in your divorce process.

WHY I WROTE THIS HANDBOOK

WHEN you first begin considering a divorce, you have many choices when it comes to hiring an attorney. The purpose of this booklet is to provide you with an insider's look at what you should expect from your divorce attorney. This information will demystify the process for you and let you know how to be prepared when you meet with an attorney. Being well prepared will give you peace of mind and will save you unnecessary emotional turmoil and legal fees.

There is a wide range of ability among lawyers who claim to practice in the area of divorce and family law. Hiring a lawyer who does not have the proper training, experience, and approach to your case can be extremely costly for you—both emotionally and financially.

Divorce can be a fairly straightforward process in New Mexico. A qualified lawyer will review the divorce process with you, identify your legal issues, and help you select the right strategy for your case. Early in your case, you should be able to understand what to expect as an outcome and how you will need to prepare for your divorce. Making the right choice in your attorney selection will give you more confidence and peace of mind as you enter negotiations with your spouse and his or her lawyer.

1

Not all lawyers practice or even understand divorce and family law

A LAWYER does not have to specialize or even practice divorce and family law on a regular basis to handle your case. And in fact, many lawyers who will offer to take your case handle only a few divorce cases as part of their overall practice. The problem with this is that law school does not prepare a lawyer to practice competently in this specific area, and it is only through training and experience that these cases can be handled properly. As the legal profession has matured, divorce and family law has become much more complex, and smart attorneys have begun to specialize and ramp up their skills in this specific area.

Family law should compose at least the majority of the practice of the person you hire to handle your divorce. The ideal situation is for your lawyer to practice only divorce and family law.

An attorney who invests all of his or her time handling family law cases is more likely to have the knowledge and experience you need to succeed and obtain your best possible resolution. An attorney with that kind of experience will understand your specific legal issues, case management, and proper handling of court proceedings, ensuring a better outcome for your case.

2

Your attorney should have experience in your jurisdiction, in your courthouse, and in front of your judge

NOT only should your attorney have experience in divorce and family law; he or she also needs to have experience in your jurisdiction (county), in your courthouse, and in front of your judge. Having that local experience ensures that your attorney knows the decision makers and how they make rulings on a daily basis.

It is critical, especially with family law cases, for your attorney to know the judges in town and how they are likely to rule on a certain case. Judges often have different approaches to divorce cases based on their case loads, their general approach to issue resolution, and how they interpret the law. These factors will dictate how your attorney presents your issues to the judge. Sometimes your case may take place in one of the smaller towns in New Mexico, and you would rather hire someone from outside of your jurisdiction with more training and experience in divorce and family law. Ask questions about who the attorney knows. The answers will provide insight about the judge who will be hearing your case and how the attorney will prepare for that judge.

You also want an attorney who has built credibility and trust in New Mexico with judges and other attorneys in the family law community. It often helps to run an Internet and social media search using a potential attorney's name to determine how he or she is involved in and perceived by the local community.

Your attorney should explain that you have the right to ask that the first judge assigned to your case be excused. While this is not a common practice, it may be vital if you have issues in front of a judge who is unlikely to rule in your favor. In such a situation, it is critical for your attorney to have significant knowledge about the judge who will be hearing your case.

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Not all divorce lawyers are qualified for all possible divorce options

EVEN lawyers who handle a large number of divorce and family law cases may not have the skills necessary to provide representation as it relates to all of your divorce options. In particular, divorce and family law has evolved to include a large number of mediated and collaborative divorce cases. If the attorney you are considering hiring does not have experience in these areas, you are greatly limiting your options.

Your attorney should have experience in the following types of divorce options:

- **LITIGATION:** This is when your attorney files a petition for divorce and takes it through the normal procedural steps for litigation, which may include numerous hearings and possibly a trial. Effective litigation work is highly specialized and requires a very specific set of legal skills.
- **UNCONTESTED DIVORCE:** If you and your spouse are in general agreement about getting a divorce and dividing up assets and debts, and if you have a general understanding about how your case should be resolved, then you may be able to file an uncontested divorce. This type of divorce takes less time and costs you less money than if your case were to go through litigation. For this option, you will need an attorney who is experienced in negotiation and effective drafting of legal documents.

- **MEDIATED DIVORCE:** In a mediated divorce, one attorney handles the case and acts as a neutral third party. He or she represents neither spouse and provides no legal advice but helps both spouses work toward a resolution of their case. The process is flexible and confidential, and it keeps you and your spouse in control of your divorce and out of court. Unfortunately, very few lawyers have the experience and skills to mediate a divorce effectively, and many will not even bother to explore this option with you. If you and your spouse can still communicate effectively about the issues in your divorce, mediation should always be explored as a first option in your case.
- **COLLABORATIVE DIVORCE:** This is a relatively new type of divorce that has grown more popular in recent years. In a collaborative divorce, both spouses and their attorneys take control of how the divorce process will work. They build a customized process for getting the case resolved without going to court, which may include the use of financial and child-custody advisers or experts. In a collaborative divorce, the attorneys do not remain neutral like they do in a mediated divorce; each attorney provides his or her client with independent legal advice regarding any proposed agreements. The parties do not go to court or rely on the court system for rulings. If the parties cannot reach a settlement, they must retain new legal counsel before filing a court proceeding. To practice collaborative divorce effectively, attorneys must undergo significant training and participate in continuing legal education in this area on an annual basis.

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Some lawyers will litigate the majority of your case without knowing what it's actually worth

In your initial consultation, your attorney should talk to you about how he or she will build a road map to the resolution of your case. Crucial to this process is an early understanding about the value of your case and how your assets and debts should be divided in a fair settlement.

I have seen too many lawyers who were unprepared in this area. Often, it isn't until they get to the settlement facilitation that they realize what the settlement will look like for their client. Sometimes they still don't know, even at that point! This can often result in the lawyers requesting a lot of documents and information they don't actually need, unnecessarily delaying the case.

Your attorney should have pre-planned checklists to gather the right information needed to properly evaluate the value of your assets and debts. Ask the attorney you are considering if he or she has a modifiable assets/liabilities worksheet to use in running multiple settlement scenarios. Your attorney should be planning what the resolution of your case should look like from very early in the process. This kind of planning improves your chances in negotiations, settlement, and at trial (if that is necessary).

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Even smart lawyers can be terrible at case management

LAWYERS do not study case management in law school; they study theoretical law, so that's what they know when they graduate. Most do not know how to run a law practice. Most lawyers get out of law school without any experience in case management, business management, or relationship management. You need to be aware of this from the moment you call a lawyer's office to schedule your first appointment. Notice how organized they are. Ask them how they handle calls and how many staff members they have.

The number one complaint about lawyers is that they often fail to call clients back. An organized attorney with sufficient support staff will return your call promptly or have a paralegal or other staff member do so. If you must speak with the lawyer directly, there should be procedures in place for scheduling the call and letting the lawyer know exactly what you need to discuss before the phone call takes place. If you hire a lawyer who doesn't have a large enough staff, or doesn't have good case management procedures in place, it is unlikely that you will be happy with your representation.

It is ideal if the attorney representing you provides you with a working client binder that helps keep you organized and provides instructions for your case. When you call with simple legal questions or billing questions, an attorney with a properly staffed office will have you talk to a legal assistant or paralegal. You should not have to pay attorney-level fees for these kinds of questions just because the firm is understaffed and hasn't designed its management system correctly. You want your money and your attorney focused on the more substantive work that requires his or her special expertise.

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Your attorney needs your help to resolve your case successfully

THE more active you are in the preparation of your case, the better informed you will be. And the more organized you are about presenting your questions and gathering your paperwork, the less it will cost you in legal fees. A large part of divorce practice is good information management.

Your active and thoughtful participation in your own case will be an important factor in how satisfied you are with your results. Before you arrive for your initial consultation with your attorney, write down a list of questions you want answered. Writing them down before the meeting will help ensure that you don't forget any important questions once you get to your attorney's office.

After your initial meeting with your attorney, take some time to think about what the resolution of your case should look like and what you really want. This should not be what your parents, friends, or others are saying you should do, but what you really need as a resolution to your case. Your realistic needs should form the road map that your attorney uses to take you through the family law process.

When your attorney asks you for information, always be as organized as possible and even summarize information when necessary. When he or she asks for tax returns, property deeds, insurance policies, or financial portfolios, put them in a binder, organize them, and label them. If additional information is needed that you have access to, you should obtain it, not your attorney.

Remember, you are being charged by the hour for the attorney's and other staff members' time. You do not need your attorney or his or her staff spending hours sifting through unorganized documents or spending time gathering information that you could easily provide yourself. My staff, for example, has sorted through many boxes full of completely disorganized information and documents, so I can tell you from personal experience that this is not the best use of your attorney's time.



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Your attorney should help you choose your battles

YOU can lower your legal fees and expend less emotional energy by picking your battles and having realistic expectations for your final outcome. That would seem to be an obvious conclusion for anyone involved in this process, yet I see countless lawyers allowing their clients to argue and spend time and money on issues that the lawyer should know are pointless in the overall scheme of the case.

Dozens of issues can be contested relating to your divorce, but it's important to understand which issues are critical to your case and which ones aren't worth the effort. Now, some lawyers may take the position that it is your case and you should make these decisions. In my opinion, however, that's not good counsel. Of course you should be the one who is primarily directing the course of your case, but in this position, it is often too easy to let emotions dictate certain decisions and to take a position that, legally, is just not viable. The right attorney will provide you with an honest assessment of what you should fight for and what you should leave uncontested. It is important to come to a mutual decision before moving forward so your attorney can achieve the desired outcome for you.

Examples of unrealistic expectations would be as follows:

- A parent who has had very little involvement in raising his or her child suddenly wanting 50/50 custody when it is time to divorce
- A spouse with significant income who has been married a long time to a non-earning spouse wanting to pay no alimony



Could your attorney argue for these positions nonetheless? Of course, and it is your right to pursue these things. But your course of action should always be measured against the financial cost, the emotional toll on the relationship, and the likelihood of success. Remember—the more volatile a divorce and custody case becomes, the more difficult it becomes for children to adjust afterward and for spouses to cooperate in a post-divorce relationship.


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You do not need a “pit bull” to handle your divorce

YOU HAVE probably seen the ads for lawyers who brag about how aggressive they are in “going after” the spouse in a divorce case. Many people refer to these lawyers as “pit bulls” and think this is the type of lawyer they should hire for their case. Overly aggressive lawyers can sidetrack your case, set the wrong tone in negotiations, interfere with settlement, and drive up legal fees. More often than not, lawyers like this make the entire process uncomfortable for everyone involved.

Confidence, competence, and assertiveness are all valuable characteristics of a divorce lawyer, but you do not need a pit bull to handle your divorce. You do need someone who can say “no” when necessary in negotiating a good deal for you, but you do not need someone who bullies others.

A great attorney will be as aggressive as is necessary in the case. It is usually a significant advantage to start off the case in a nice, civil fashion, offering a road map for a speedy resolution of the case through settlement. Of course there are times when an aggressive stance will be necessary from the beginning, but the initial tone of the case is something the client should be completely involved in deciding. If a spouse has taken a child out of state or has hidden assets instead of disclosing them, for example, then by all means, take a hard stance from the beginning. Otherwise, be nice. You have everything to gain and nothing to lose with this initial approach.



If you have consulted with a lawyer and he or she is too aggressive or seems to be promising too much, you should probably keep looking. Pay attention to your instincts. It's a bad sign when a lawyer promises too much because the reality of divorce is that there is a bit of give and take on both sides, and lawyers make the most money when people cannot agree and continue fighting. If you're not comfortable with a lawyer during an initial consultation, do you really want that person representing you in your divorce case? Look for someone who can strike a healthy balance between professional, courteous representation and aggressive pursuit of your positions in the case.

CONCLUSION

DIVORCE is emotionally and financially challenging for all family members involved, even if both spouses agree to get a divorce and cooperate fully throughout the divorce process. Getting a divorce is a decision that will affect many aspects of your life and your children's lives. Finding a competent, compassionate, and ethical attorney who focuses his or her practice in family law and divorce and who will look out for your best interests is critical to resolving your divorce in the most positive manner possible. On the other hand, hiring an inexperienced lawyer who does not fully understand the divorce and family law process can result in a costly and prolonged divorce.

Your goal should be to go into the process with a full understanding of the legal and practical aspects of your case. The attorney you choose should be committed to developing the most positive outcome for you as possible—and as quickly as possible. The sooner your divorce is final, the sooner you can begin your new life.

If you have any questions that remain unanswered as you interview lawyers, please call our firm, and one of our attorneys will get you the answers you need to make the best decision possible.

HOW WE CAN HELP YOU


AT New Mexico Legal Group, we handle all major aspects of family law, including divorce. Whether you want to know your rights before getting married or what you are entitled to receive during a divorce, we are here to help you. Our priority is to make sure you are well informed and that you get the results you want. The wide range of family law services we offer includes the following:

- Divorce
- Annulment
- Separation
- Division of marital property
- Child custody
- Child support
- Paternity
- Post-judgment modifications
- Domestic partnership agreements
- Prenuptial/antenuptial/postnuptial agreements
- Domestic violence



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